Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	
Access Charge Reform	CC Docket No. 96-262
Price Cap Performance Review for Local Exchange Carriers	CC Docket No. 94-1
Low-Volume Long Distance Users	CC Docket No. 99-249
Federal-State Joint Board on Universal Service	CC Docket No. 96-45

COMMENTS OF THE STATE OF HAWAII

The State of Hawaii (the "State"),[1] by its attorneys, hereby responds to the Commission's *Notice of Proposed Rulemaking* concerning the access charge reform proposal submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS"). While the State believes that the CALLS proposal raises a number of significant consumer protection issues, these comments are focused on the Coalition's proposal to fold existing carrier and subscriber charges into a single subscriber line charge ("SLC") and then to deaverage the increased SLC.[2] As explained below, the Commission should ensure that any efforts it

[1] These comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

[2] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, CC Docket Nos. 96-262, 94-1, 99-249, 96-45 (rel. Sep. 15, 1999) ("*Notice*").

undertakes to reform the access charge mechanisms used to fund universal service do not undermine the important universal service averaging mandates found in Section 254 of the Communications Act. More specifically, the Commission should ensure that any deaveraging of common line charges imposed on end-users do not lead to statutorily prohibited disparities in the rates charged to end-users in urban areas and those charged to end-users in rural, insular, and high cost areas.

I. THE COMMISSION SHOULD REJECT ANY ATTEMPTS TO USE THIS PROCEEDING AS A PRETEXT TO SEEK THE DEAVERAGING OF INTEREXCHANGE RATES IMPOSED ON END-USERS

During the course of past access charge reform proceedings, some interexchange carriers have attempted to use regional variances in carrier-to-carrier access rates as a basis for avoiding the geographic rate averaging mandates of Section 254(g). Under the CALLS proposal, common line charges would be consolidated and shifted into a single charge imposed on subscribers.[3] To the extent that this shift would significantly reduce carrier-to-carrier charges, it would minimize the magnitude of any regional variances in the underlying cost structures of interexchange carriers. The Commission, therefore, should reject any attempts made by interexchange carriers to use the CALLS proposal as a pretext for once again seeking to deaverage interexchange rates imposed on end-users.

Section 254(g) of the Communications Act states that providers of interexchange telecommunications services must charge "subscribers in rural and high cost areas" rates that are

[3] *See id.* at ¶ 2; *see also Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan*, at 12 (filed Aug. 20, 1999) ("*Coalition Memorandum*").

"no higher than the rates charged by each such provider to its subscribers in urban areas."[4] By its terms, this provision clearly requires the geographic averaging of interexchange rates charged to end-users.[5] The fact that access charges may be reduced or deaveraged simply does not provide a justification for ignoring this congressional mandate. As the Commission has recognized, Congress was "fully aware of geographic differences in access charges when it adopted Section 254(g), and intended us to require geographic rate averaging even under these conditions."[6] Further, like other costs of providing interexchange services – such as labor and infrastructure costs – access rates have long varied from region to region and interexchange carriers have been able to achieve compliance with the geographic averaging requirement. The Commission should require interexchange carriers to continue to do so.

To the extent that any carriers invite the Commission to use this proceeding to forbear from Section 254(g)'s geographic averaging requirements, the Commission must decline to do so. Congress has made clear with respect to geographic averaging that the Commission's forbearance authority under Section 10 of the Communications Act can be used only sparingly and for "limited exceptions."[7] The wholesale deaveraging of end-user rates for interexchange services plainly would not constitute a "limited exception." Moreover, the Commission has

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[4] 47 U.S.C. § 254(g).

[5] The legislative history accompanying Section 254(g) states: "The conferees intend the Commission's rules to *require* geographic rate averaging . . . ." *See* H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996) (emphasis added) (*"House Conference Report"*).

[6] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace – Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 9564, 9583 (1996).

[7] More specifically, the Conference Report states: "The conferees are aware that the Commission has permitted interexchange providers to offer non-averaged rates for specific services *in limited circumstances* (such as services offered under Tariff 12 contracts), and intend that the Commission, where appropriate, could continue to authorize *limited exceptions* to the general geographic rate averaging policy using the authority provided by new Section 10 of the Communications Act." *See id.* (emphasis added).

previously rejected the notion that forbearance from Section 254(g)'s geographic averaging requirement would be appropriate.[8]

II. THE COMMISSION SHOULD GIVE CAREFUL CONSIDERATION TO THE DEAVERAGING OF SUBSCRIBER CHARGES

In its proposal, CALLS also has suggested that SLCs imposed on end-users should be increased and deaveraged.[9] As a result, CALLS observes, rates charged to end-users "will reflect actual variations in the costs of providing service in varying geographic areas."[10] The Commission should give this component of the CALLS proposal especially careful consideration.

Section 254 clearly expresses Congress' preference for eliminating or, at the very least, minimizing disparities in rates charged to end-users in rural and high-cost areas, on the one hand, and urban areas, on the other hand. First, as discussed above, Section 254(g) requires providers of interexchange services to average interexchange rates across urban, rural, and high-cost areas.[11] Second, Section 254(b)(3) mandates that "consumers in rural, insular, and high cost areas, should have access to telecommunications and information services" at rates that are "reasonably comparable" to those charged to consumers in rural areas.[12] These provisions, individually and taken together, place clear limits on the ability of carriers to deaverage rates

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[8] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, 12 FCC Rcd 19582, 16022 (1997); *see also Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd at 9583.

[9] *See Coalition Memorandum* at 12.

[10] *Id.* at 19.

[11] *See* 47 U.S.C. § 254(g).

charged to end-users in connection with the provision of interexchange telecommunications services.

The geographic rate mandates found in Section 254 are vital to the overall commitment to universal service made by Congress in the Telecommunications Act of 1996. To be sure, Congress intended the universal service fund to play a significant role in fulfilling this commitment. Congress, however, did not intend to rely solely on the fund to achieve its universal service goals. To the contrary, through the enactment of Section 254(g) and Section 254(b)(3), Congress imposed affirmative mandates on the Commission to eliminate or, at the very least, minimize disparities in the rates charged to end-users in urban areas and those in rural, high-cost, and insular areas.

The Commission must adhere to the policies mandated by Section 254 with respect to avoiding geographic rate disparities in its efforts to reform the access charge system. Indeed, it would be ironic if the Commission's efforts to create greater transparency in the mechanisms used to fund universal service were to create the very rate disparities that the universal service provisions of the Telecommunications Act, whether Section 254(g), Section 254(b) or otherwise, were intended to eliminate. To avoid this result, the Commission should ensure that the deaveraging of any access rate elements imposed on end-users (*i.e.*, Subscriber Line Charges) do not lead to statutorily prohibited disparities in the rates charged to end-users in urban areas and those charged to end-users in rural, insular, and high cost areas.

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[12] *Id.* at § 254(b)(3).

CONCLUSION

The Commission should reject any attempts made by interexchange carriers to use the CALLS proposal as a pretext to seek the deaveraging of interexchange rates imposed on end-users. Moreover, the Commission should also ensure that, as required by Section 254 of the Communications Act, its efforts to reform the access charge system do not lead to statutorily prohibited disparities in the rates charged to end-users in urban areas and those charged to end-users in rural, insular, and high cost areas.

Respectfully submitted,

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